

9 FAM 42.43 Procedural Notes

(TL:VISA-438; 07-10-2002)

9 FAM 42.43 PN1 Returning Petitions for Possible Revocation

(TL:VISA-438; 07-01-2002)

If INS requests the return of a visa petition, or if the consular officer knows, or has reason to believe, that the alien beneficiary of an approved petition is not entitled to the accorded status, the consular officer shall return the petition directly to INS. The original petition, along with all supporting documents, shall be returned under cover of *Form DS-3096, Consular Return/Case Transfer Cover Sheet*, and a memorandum supporting the recommendation for revocation. The report must be comprehensive, clearly showing factual and concrete reasons for revocation. The report must be well reasoned and analytical rather than conclusory. Observations made by the consular officer cannot be conclusive, speculative, equivocal or irrelevant.

9 FAM 42.43 PN2 Petitions Terminated Under INA 203(g)

9 FAM 42.43 PN2.1 Post Action

(TL:VISA-351; 01-29-2002)

When a registration is terminated under INA 203(g) posts shall take the following action:

(1) Send the applicant Form DSL-1046, Final Notice of Cancellation of Registration, under Section 203(g). [See 9 FAM 42.83 Related Statutory Provisions and 9 FAM 42.83 Notes];

(2) Destroy the petition; and

(3) Send a memorandum to NVC advising them of the destruction of the petition.

9 FAM 42.43 PN2.2 NVC Action

(TL:VISA-170; 10-01-1997)

Upon notification of the termination of registration and the destruction of the visa petition, NVC shall make a record of the following information:

- (1) The Alien's name;
- (2) The Alien's date and place of birth;
- (3) The Alien's priority date; and
- (4) The date of termination of the petition.

This information shall be made available to INS prior to granting of requests for old priority dates.

9 FAM 42.43 PN3 Disclosing Information from Visa Files to INS in Petition Revocation Cases

(TL:VISA-170; 10-01-1997)

a. Because petitioners have a right to know why their petitions are denied, or approval is being revoked, all information provided to INS in revocation proceedings which is not classified under Executive Order 12356 is subject to release by the INS. In this regard, information coming from sources which the post feels should be held confidential and not released to the petitioner should be presented to the INS in a form which protects the identity of the source. All classified information should be clearly identified as classified and not releasable to prevent accidental release by the INS.

b. As the final statutory responsibility for evaluating the factual evidence and drawing legal conclusions rests with INS, posts should take care to present the factual record developed pertaining to the provability of the petition and avoid unnecessary evaluative or conclusive comments and the inclusion of information not directly relevant to the issue. Posts should also refrain from including derogatory characterizations and emotionally charged or imprecise phrases in reports to INS. These remarks have little evidentiary value, and may prove embarrassing when they end up in the hands of the petitioner. For release of information directly by the consular officer, to the petitioner [see 9 FAM 40.4 Related Statutory Provisions and 9 FAM 40.4 Notes.]

9 FAM 42.43 PN4 Preparing Investigation Requests

(TL:VISA-170; 10-01-1997)

It is essential in preparing this type of case to specify exactly what aspects of the case should be pursued in the United States. For INS to make a case for revocation, they must have all the facts developed overseas as well as those facts developed in the course of their investigation. The consular officer shall carefully set forth all the facts that can reasonably be developed to be included in the memo requesting the investigation. The consular officer shall include the originals of all documents that have a bearing on the case as evidence. The consular officer shall also send copies of these requests to the Department (CA/VO/FPP and CA/VO/F).